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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,700	01/02/2004	Debra A. Kolz	9512.18010-PROV FOR	3815

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Patricia A. Limbach
RYAN KROMHOLZ & MANION, S.C.
Post Office Box 26618
Milwaukee, WI 53226-0618

EXAMINER

HECKENBERG JR, DONALD H

ART UNIT	PAPER NUMBER
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1722

DATE MAILED: 06/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/750,700

Applicant(s)

KOLZ, DEBRA A.

Examiner

Donald Heckenberg

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 15-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13 and 14 is/are rejected.
- 7) ☒ Claim(s) 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date =. | 6) <input type="checkbox"/> Other: _____ |

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1. Applicant's election with traverse of Group I (claims 1-14) in the reply filed on 20 April 2006 is acknowledged. The traversal is on the grounds that Groups I and III are so closely related that it would not be an undue burden to examine the groups together. This is not found persuasive because the groups represent different claim types, specifically apparatus and method, thereby requiring fundamentally different considerations resulting in an undue burden if examined together. For example, the intended use of a claimed apparatus is not germane to the issue of a patentability of an apparatus, whereas use of a method is an integral part of the patentability determination (note the further discussion of this issue below). Therefore, the consideration of both groups together would present an undue burden.

The requirement is still deemed proper and is therefore made FINAL.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the

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art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claim 1, 2 and 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over German Pub. No. 33 34 231 (hereinafter "DE '231") in view of German Pub. No. 27 03 900 (hereinafter "DE '900"). Note the English Abstracts of these references also made of record with this Office Action.

DE '231 discloses a construction kit for making a gingerbread house. The kit includes a plurality of cutters for making the end, side, and roof panels of the house (see Abstract).

DE '231 does not disclose the side surface of the cutters as having a tab and a notch. As demonstrated by DE '900, however, the use of tabs and notches is known in the art for the

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purpose of providing a means for connecting the pieces of the gingerbread house together. DE '900 shows tab (8) and notch (6) forms on the side surfaces of panels for the purpose of providing a connection with other parts of the house (see Fig. 2). Therefore, it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to have modified the cutters disclosed by DE '231 as such to have them include a tab and notch on the side surface because this would allow for the formation of corresponding tab and notch connection pieces in the formed panels, and thus a connection means between pieces as suggested by DE '900.

Claims 5 and 6 recite features directed to the intended use of the claimed device. Specifically, these claims further define the material to be used with the claimed device. It is well settled, however, that the intended use of a claimed apparatus is not germane to the issue of patentability. In re Casey, 370 F.2d 576, 580 152 USPQ 235, 238 (CCPA 1967); In re Otto, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963); MPEP § 2115. Furthermore, inclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims. In re Otto, 312 F.2d 937, 136 USPQ 458 (CCPA 1963); In re Young, 75 F.2d 996, 25 USPQ 69 (CCPA 1935); MPEP § 2115. Thus, as the device suggested by the combination of DE '231 and

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DE '900 is clearly capable of operating with both edible and non-edible materials, the device renders obvious the use limitations of claims 5 and 6.

5. Claims 1, 3 and 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Babos (U.S. Pat. No. 4,431,395; previously made of record in the I.D.S. filed by Applicant) in view of DE '900.

Babos discloses a gingerbread house forming apparatus. The apparatus includes a plurality of molds for forming the end, side and roof panels of the house (see for example, Fig. 1). Babos does not disclose the side surfaces of the cutters as having tabs and notches. As demonstrated by DE '900, however, the use of tabs and notches is known in the art, for the purpose of providing a means for connecting the pieces of the gingerbread house together. DE '900 shows tab (8) and notch (6) forms on the side surfaces of panels for the purpose of providing a connection with other parts of the house (see Fig. 2). Therefore, it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to have modified the cutters disclosed by Babos as such to have them include a tab and notch on the side surfaces of the molds because this would allow for the formation of corresponding tab

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and notch connection pieces in the formed panels, and thus a connection means between pieces as suggested by DE '900.

Claims 5 and 6 recite features directed to the intended use of the claimed device. Specifically, these claims further define the material to be used with the claimed device. As described above, however, the intended use of a claimed apparatus is not germane to the issue of patentability. Thus, as the device suggested by the combination of Babos and DE '900 is clearly capable of operating with both edible and non-edible materials, the device renders obvious the use limitations claims 5 and 6.

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Babos and DE '900 as applied to claims 1, 3 and 5-8 above, and further in view of Oliver (U.S. Pat. No. 4,156,516).

Babos and DE '900 suggest the molds as described above. Babos and DE '900 do not disclose the molds to include a fill line. Oliver, however, notes that fill lines can be included in food molds for the purpose of indicating a proper amount of material to be used in the mold (cl. 16, ll. 33-36). Therefore, it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to have modified the mold

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suggested by Babos and DE '900 as such to further include a fill line because this would indicating a proper amount of moldable material to be used when filling the mold as suggested by Oliver.

7. Claims 9, 10, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE '231 and DE '900 as applied to claims 1, 2 and 5-8 above, and further in view of Quinlivan (U.S. Pat. No. 4,285,978) and Sugarcraft's Customer Service page from sugarcraft.com (hereinafter "Sugarcraft").

DE '231 and DE '900 suggest the construction kit with cutters as described above. DE '231 and DE '900 and do not disclose the kit to include items such as decorating material, dough mix, and instructions for use. Quinlivan and Sugarcraft, however, note that cookie manufacturing kits can include decorating materials, dough mixes, and instructions (see for example, Quinlivan, cl. 7, ll. 29-33; Sugarcraft examples of kits). Thus, it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to have modified the kit disclosed by DE '231 and DE '900 as such to further include items such as decorating material, dough mix, and instructions for use because it is known in the art to

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include these items together in order to form a complete baking kit as suggested by Quinlivan and Sugarcraft.

With respect to claim 13, the combination of DE '231, DE '900, Quinlivan, and Sugarcraft disclose the combination of materials for a cookie manufacturing kit. Chocolate is a well known material to be included with cookies, and thus it would have been obvious to one of ordinary skill in the art to further include chocolate with the kit.

8. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE '231, DE '900, Quinlivan, and Sugarcraft's as applied to claims 9, 10, and 14 above, and further in view of Underwood (U.S. Pat. No. 3,311,069; previously made of record in the I.D.S. filed by Applicant).

DE '231, DE '900, Quinlivan, and Sugarcraft disclose and suggest the kit as described above. DE '231, DE '900, Quinlivan, and Sugarcraft do not suggest the kit to further include a dough depth gauge.

Underwood discloses a method and device for securing uniformity in thickness of a cookie dough sheet. Included by Underwood is a dough depth gauge device (Fig. 1) which ensures uniform thickness in the dough (cl. 2, l. 64 - cl. 3, l. 8).

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It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to have modified the kit suggested by DE '231, DE '900, Quinlivan, and Sugarcraft as such to further include a dough depth gauge because such a device is known in the art to allow for creating a uniformly thick dough in the baking process as suggested by Underwood.


9. Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald Heckenberg whose telephone number is (571) 272-1131. The examiner can normally be reached on Monday through Friday from 9:30 A.M. to 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Yogendra Gupta, can be reached at (571) 272-1316. The official fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <<<http://pair-direct.uspto.gov>>>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

 S.30-6
Donald Heckenberg
Primary Examiner
A.U. 1722